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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 941.

AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION, INC.,

Petitioner,

against

TRINIDAD CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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TRINIDAD CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioner, American Steamship Owners Mutual Protection and Indemnity Association, Inc., prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on January 20, 1956.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Second Circuit, affirming the decision of the District Court printed in Appendix B hereto, *infra*, page 16, is not yet officially reported. The *per curiam* opinion of the Court of Appeals denying the petition of petitioner

for a re-hearing printed in Appendix C hereto, *infra*, page 20, is not yet officially reported either.

Jurisdiction.

The judgment of the Court of Appeals was entered on January 20, 1956, and a petition for a re-hearing was denied by the Court of Appeals on February 20, 1956. The jurisdiction of this court is invoked under 28 U. S. C., Section 1254 (1).

Question Presented.

The basic question presented is whether the collision of the steamship *Fort Mercer* with the pontoon and pipeline of the dredge *George W. Catt*, and the forcing of the pontoons into the shrimpboat *Icie*, constituted "collision of the insured vessel, (*Fort Mercer*) with another vessel or craft" within the policy issued by petitioner to respondent. If it was, respondent is not entitled to recover for damage to the pipeline and the *Icie*.

Statute Involved.

The pertinent statutory provision is printed in Appendix A hereto, *infra*, page 15.

Statement.

This is a suit in admiralty wherein Trinidad Corporation seeks recovery from American Steamship Owners Mutual Protection and Indemnity Association, Inc., for loss, damage and expenses under the terms of a protection and

indemnity policy of marine insurance issued by petitioner to respondent.

The parties stipulated the facts upon which their contentions are based, leaving only an issue of law to be determined. The material facts stipulated are as follows:

On October 2, 1949, while the insurance policy issued by petitioner to respondent was in force, the SS. *Fort Mercer* was proceeding outward bound from the port of Houston, Texas through the Houston Ship Channel. At that time, the hydraulic dredge *George W. Catt* was engaged in widening and deepening the west side of the navigable channel of the Houston Ship Channel and in pumping the spoil into a pipeline connected to the dredge. The discharge pipeline which was attached to the dredge was floated on the water by pontoons. The pipeline ran out in a northerly direction directly astern from the dredge for a distance of 1200 to 1300 feet at which point the pipeline turned down from the pontoons into the water to the bottom of the channel and ran in an easterly direction across the channel to the disposal area on the opposite shore where the silt was deposited. The pontoon and pipeline equipment was owned by the owner of the dredge *George W. Catt* and was agreed to be part of the normal equipment of the dredge. The shrimpboat *Icie* was moored to the east side of a dock on the west shore of the Houston Ship Channel, directly west of the pontoon line, running from the stern of the dredge. The outboard side of the *Icie* was about 75 feet inshore of the pontoon line.

As the *Fort Mercer* proceeded outward bound on October 2, 1949, she was being assisted in her passage by the tug *Ajax*. When the *Fort Mercer* was in the vicinity of Morgan Point, due to the negligence of those in charge of her, she was allowed to leave the regular deep water channel and to sheer to starboard and enter the area being

dredged by the *George W. Catt.* The *Fort Mercer* was to the east of the dredge at a distance of about 50 feet and her bow grounded on the edge of the undredged area ahead of and to the east of the dredge. When the *Fort Mercer* was so grounded, her starboard quarter was about 50 feet from the port bow and side of the dredge.

In order to refloat the *Fort Mercer,* it was necessary to back and pull her astern with the assistance of the tug *Ajax.* After backing, the bow of the *Fort Mercer* was turned to port in order to get the vessel back into the regular deep water channel. In performing this maneuver, due to the negligence of those in charge of the *Fort Mercer,* her stern collided with the floating pontoons and pipeline of the dredge at a distance of about 500 feet from the stern of the dredge, damaging the pontoons and pipeline and forcing one of the pontoons into the *Icie.* The collision damaged the *Icie* and caused her to sink. There was no direct contact between the *Fort Mercer* and the *Icie.*

Under the terms of the marine insurance policy, respondent was insured against certain risks, liabilities and expenses in connection with the operation of the vessel *Fort Mercer.*' By the terms of the policy it was agreed between petitioner and respondent, inter alia, as follows:

> "The Association agrees to indemnify the Assured against any loss, damage or expense which the Assured shall become liable to pay and shall pay by reason of the fact that the Assured is the owner (***) of the insured vessel and which shall result from the following liabilities, risks, events, occurrences and expenditures:
>
> • • • • • •
>
> "(3) Liability for loss or damage arising from collision of the insured vessel with another ship or vessel insofar as such liability is excluded from the liabilities insured under the following four-fourths

Collision Clause in the American Marine Hull Insurance Syndicate Form of Policy:

"And it is further agreed that if the vessel hereby insured shall come into collision with any other ship or vessel and the Assured or the Charterers in consequence thereof or the Surety for either or both of them in consequence of their undertaking shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, we, the Underwriters, will pay the Assured or Charterers such proportion of such sum or sums so paid as our respective subscriptions hereto bear to the value of the vessel hereby insured, provided always that our liability in respect of any one such collision shall not exceed our proportionate part of the value of the vessel hereby insured. • • •

"(4) Liability for loss of or damage to any other vessel or craft, or to property on board such other vessel or craft, caused otherwise than by collision of the insured vessel with another vessel or craft.

• • • • • •

"(5) Liability for damage to • • • any fixed or movable object or property whatsoever, except another vessel or craft • • • unless elsewhere covered herein.

• • • • • •

"(13) Liability for costs, charges and expenses reasonably incurred and paid by the Assured in connection with any liability insured under this policy, • • •."

PROCEEDINGS IN THE DISTRICT COURT.

This case came on for trial in the United States District Court for the Southern District of New York on February 15, 1955, at which time the parties submitted the

stipulation setting forth the facts upon which agreement between the parties had been reached. No witnesses were heard by the Court and the sole evidence before the Court was that contained in the stipulation of facts (R. 23-31).

Petitioner took the position that the collision of the *Fort Mercer* with the pontoon and pipeline, and the forcing of one of the pontoons into collision with the *Icie,* constituted a collision with another vessel, and that liability for damage caused thereby was not within the coverage of petitioner's policy. It was a liability, indemnity for which was recoverable under the four-fourths collision clause in the American Marine Hull Insurance Syndicate Form of Policy referred to in clause 3 of the policy issued by petitioner.

Respondent, on the other hand, contended that liability for the damage to the pontoons, pipeline and the *Icie* was covered by the policy of marine insurance issued by petitioner inasmuch as the collision of the *Fort Mercer* with the pontoons and pipeline was not a collision with another vessel. Respondent agreed that if the pontoon and pipeline were considered part of the vessel, the forcing of one of the pontoons into the *Icie* was a collision with another vessel within the meaning of the policy. Respondent conceded that the sole issue was one of policy interpretation and that all questions of fact had been stipulated by the parties.

The District Court rejected the position of petitioner and granted respondent recovery under the terms of the marine insurance policy. The Court held that there was no question that the dredge itself was a vessel. *Ellis* v. *United States,* 206 U. S. 246, 259.

The Court in its opinion relied principally upon the English case of *Bennett S. S. Co., Ltd.* v. *Hull Mutual S. S. Protecting Soc. Ltd.* (1913), 3 K. B. 372, aff'd, (1914) 3

K. B. 57. In that case the insured vessel collided with a fishing net which was being towed by a fishing vessel. The question was whether the liability of the insured vessel resulted from a collision with another vessel. The Court likened the pipeline involved in this case, which was an appurtenance of the dredge in performing her dredging operations, to the net of the fishing vessel, and it said the pontoon pipeline was in no sense essential equipment of the dredge as a vessel. The pipeline did not move with the dredge in the same sense as its hull or anchor. Once the connection with the dredge was established, both the dredge and pipeline were required to remain at anchor at an established location for the purpose of permitting the pumping operations deepening the navigable channel to be performed. According to the District Court it then followed that under the *Bennett* case, *supra,* the pipeline was not a part of the vessel, notwithstanding that it was stipulated the pipeline was part of the normal equipment used by the dredge (R. 25). The Court said its conclusion was supported by *McWilliams Dredging Company* v. *United States,* 105 F. Supp. 582, 588, where, in referring to a collision with a pipeline like that in this case, the Court said that "the pipeline of a dredge is not a vessel".

On April 20, 1955 a final decree was entered granting respondent recovery against petitioner. Petitioner appealed from that decree to the Court of Appeals.

Opinion of the Court of Appeals.

On January 20, 1956 Judge Medina for the Court of Appeals for the Second Circuit affirmed Judge Palmieri's decision. The Court, however, reached its decision upon different grounds than those relied upon by the District Court.

The Court of Appeals relied upon the definition of a vessel set forth in 1 U. S. C., §3, which defines a vessel as including "every description of water craft or other artificial contrivance used or capable of being used as a means of transportation on water". The Court noted that the petitioner was not contending that the section of pipe and pontoons apart from the dredge were by themselves a vessel. The pontoon pipeline was erroneously held by the Court not to be part of the vessel because the Court could not see how the pontoon pipeline became capable of transportating anything when attached to the dredge in operation, and hence immobile.

The Court applied the definition of a vessel to appurtenances of a vessel to see whether they could properly be called a part of the vessel itself. The logical conclusion of the Court's reasoning is that before an appurtenance of a vessel can be called part of the vessel, it is necessary that the appurtenance be capable of transporting something when performing its function.

The Court reached the same conclusion from a consideration of the phrase "property on board", appearing in clause 4 of the policy. According to the Court, the use of the broad term "property" left no doubt that everything on the vessel, whether or not part of the vessel, was excluded from the coverage of the policy. Thus, an appurtenance of a vessel to be considered part of the vessel must actually be on board the vessel itself. Further the Court reasoned that P. & I. coverage was intended as a complement to collision insurance and unless this liability fell within the terms of the P. & I. policy this purpose would be frustrated. Of course, the complementary character of the two policies would not be frustrated if the loss fell within the terms of the hull policy, as petitioner contends.

The Court then stated that it reached the same result as did the lower Court by following the reasoning of the English court in the *Bennett* case. However, the Court of Appeals expressly disagreed with the District Court insofar as it indicated approval of the English case *In re Margetts* v. *The Ocean Accident and Guaranty Corporation* (1901), 2 K. B. 792, which held that the extended anchor chain of a vessel was part of the vessel itself.

The court did not think its conclusion was affected by *Moore* v. *Purse Seine Net,* Cal., 105 P. 2d 919, rev'd on rehearing 118 P. 2d 1 (1940), aff'd sub. nom. *C. J. Hendry* v. *Moore,* 318 U. S. 133, or by any of the other cases cited by respondent.

Reasons for Granting the Writ.

(1) The decision of the Court below affects an important question of Federal law, which has not been, but should be settled by this Court, as to the proper interpretation of 1 U. S. C. §3, defining the word "vessel". The Court of Appeals erred when it interpreted this section as follows (Appendix B, p. 18):

> " 'Vessel', in the broadest sense, may be defined as including 'every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.' 1 U. S. C. §3. But respondent concedes that the sections of pipe and pontoons, apart from the dredge, are not by themselves a vessel, or craft, within the meaning of the policy, and we cannot see how they become capable of transporting anything when attached to the dredge in operation and hence immobile."

In determining whether the pontoons and pipeline were part of the dredge and, therefore, part of the "vessel" with-

in the meaning of the policy, the Court of Appeals applied the test whether the pontoons and pipeline, when attached to the dredge, were capable of being used as a means of transportation. The Court using the definition of a vessel contained in 1 U. S. C. §3 erroneously applied it to appurtenances of a vessel to determine if they may be considered parts of the vessel.

The reasoning of the Court of Appeals is directly contrary to the decision in *The Admiral Peoples* (1935), 295 U. S. 649, in which case this Court held that a ship's gangplank, when placed in position, was part of the vessel itself, This Court stated its conclusion in this regard at pages 651, 652 of its opinion as follows:

> "The basic fact in the instant case is that the gangplank was a part of the vessel. It was a part of the vessel's equipment which was placed in position to enable its passengers to reach the shore. It was no less a part of the vessel because in its extension to the dock it projected over the land. Thus, while the libelant was on the gangplank she had not yet left the vessel. This was still true as she proceeded to the shore end of the plank."

Obviously a ship's gangplank "is not capable of being used as a means of transportation on water." Nevertheless, this Court correctly held the *Admiral Peoples'* gangplank to be part of the vessel. While it is true that in the *Admiral Peoples* case, this Court had before it the question whether a passenger, while disembarking from a ship over its gangplank, and who fell from the shore end of the gangplank to the dock and was injured, could properly bring her action in an admiralty court, there is no logical reason for a different meaning being applied to the word "vessel" when determining the jurisdiction of an admiralty court,

from the meaning to be applied to the word "vessel" under this policy of marine insurance.

The test used by the Court of Appeals to determine what appurtenances of the vessel are properly deemed part of the vessel is directly contrary to the reasoning of the American and English cases. Logically, and under the authorities, the word vessel includes all essential appurtenances attached to a vessel, whether on board or not, without which the vessel could not execute her mission.

The Supreme Court of California in *Moore* v. *Purse Seine Net,* 105 P. 2d 919, rev'd on rehearing 118 P. 2d 1 (1940), aff'd sub nom. *C. J. Hendry* v. *Moore,* 318 U. S. 133, stated the proper definition for determining whether an appurtenance of a vessel is to be considered a part of a vessel. The court at page 921 said:

> "Admittedly the net in this case was seized upon navigable waters. The vessel from which it was taken was engaged in fishing, and the net was a part of her equipment. If it was necessary to the ship's enterprise and indispensable for the accomplishments of the objects of the particular voyage, it was, in legal contemplation, a part of the vessel, although it was not required for navigation. *Turner* v. *United States,* 2 Cir., 27 F. 2d 134; *The Buffalo,* D. C., 148 F. 331; *The Edwin Post,* D. C., 11 F. 602; *The Witch Queen,* 30 Fed. Cas. 396."

The definition of the word vessel in the *Moore* case, *supra,* would include the gangplank of a vessel as well as the anchor of a vessel. However, the test that the Court of Appeals applied to the appurtenances of a vessel would exclude both of these essential appurtenances from the meaning of the word vessel.

2. The Court of Appeals failed properly to define the word "vessel" when it said as follows:

> * * * "The same conclusion emerges from a consideration of the phrase 'property on board' which appears in clause (4). For the use of the broad term 'property' leaves no doubt that everything on the vessel, whether or not part of the vessel, is excluded from coverage. Nothing could have been simpler than to broaden the exclusion to apply to property off the vessel, but attached thereto, if that had been desired."

If the above language of the Court is logically extended, damage caused to a gangplank of a vessel or to an anchor chain extending from the vessel while in use, will fall under the protection and indemnity policy such as here in suit because not physically aboard the vessel. This part of the Court's decision results in considerable uncertainty as to whether damages of this nature would fall within the terms of the hull policy or whether indemnity for these damages could be obtained under the usual form of protection and indemnity policy.

The Court below further created doubt when it questioned the English decision *In re Margetts and the Ocean Accident and Guaranty Corporation, supra,* holding that a collision with an anchor attached by twenty to thirty fathoms of chain to a schooner was a collision with a vessel, as follows:

> "In the District Court, respondent appears to have relied almost entirely on the authority of *In re Margetts.* While the court below properly held *In re Margetts* inapplicable here, it did so by distinguishing it from the *Bennett* case in such a way as to perhaps indicate approval of *In re Margetts.* But we find no occasion now to express any opinion

with reference to *In re Margetts.* We file this caveat, however, as *In re Margetts* followed and extended the principle of *The Niobe,* (1891) A. C. 401, in which it was held that a ship in tow of a tug must be regarded as one and the same vessel so that the ship was liable for damages to another vessel with which the tow collided. This circuit, however, has voiced a clear preference for the view of Lord Bramwell, who dissented in *Niobe* because he thought that the language of the collision clause, a typical one, was not, but should have been, given its natural and primary meaning. *Western Transit Co.* v. *Brown,* 2 Cir., 161 Fed. 869, cert. denied, 210 U. S. 434; *Coastwise S. S. Co.* v. *Aetna Ins. Co.,* S. D. N. Y., 161 Fed. 871; see also 2 Arnould, Marine Insurance §795 n. 93 (13th ed., Lord Chorley, 1950)."

In doing so, the court failed to take account of its own decision in *The Schodack,* 89 F. 2d 8, reconciling the *Niobe, supra,* with its decision in *Western Transit Co.* v. *Brown, supra.* In addition it overlooked the fact that "there are special reasons for keeping in harmony with the marine insurance laws of England". *Queens Insurance Co.* v. *Globe Insurance Co.,* (1924) 263 U. S. 487, 493; *Calmar Steamship Corporation* v. *Scott,* (1953) 345 U. S. 427, 442-443.

3. The policy of protection and indemnity insurance involved in this suit is in general use in the shipping community in the United States and in England. Many cases have arisen in which the question has been whether the protection and indemnity policy covers the type of loss involved in this suit or whether indemnity for such loss is covered by the hull policy generally in use. A decision of this court would determine which policy covers this type of loss in all future cases. Thus, the decision of this

APPENDIX B.

UNITED STATES COURT OF APPEALS.
FOR THE SECOND CIRCUIT.

No. 154—October Term, 1955.

(Argued December 14, 1955 Decided January 20, 1956.)

Docket No. 23749.

TRINIDAD CORPORATION,
Libelant-Appellee,

against

AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION & INDEMNITY ASSOCIATION, INC.,
Respondent-Appellant.

Before:

CLARK, *Chief Judge,* and
MEDINA and WATERMAN, *Circuit Judges.*

Appeal from a decree of the United States District Court for the Southern District of New York. In admiralty. Edmund L. Palmieri, *Judge.*

Respondent appeals from a decree holding it liable for damages arising out of a collision between the insured vessel and a pontoon attached to a dredge. Reported below in 130 F. Supp. 46. Affirmed.

BIGHAM, ENGLAR, JONES & HOUSTON, New York City (Leonard J. Matteson and Julian S. Gravely, Jr., of Counsel), *for libelant-appellee.*

KIRLIN, CAMPBELL & KEATING, New York City (Ira A. Campbell and Elmer C. Maddy, of Counsel), *for respondent-appellant.*

MEDINA, *Circuit Judge:*

Libelant is insured under a protection and indemnity (P & I) policy on which it claimed indemnification for damages caused by the negligent operation of its vessel, the SS. *Mercer.* Upon respondent insurer's denial of the claim, libelant brought suit in admiralty, and from the decree there entered, respondent prosecutes this appeal.

The facts, having been stipulated, are not in dispute, and may be stated briefly. The SS. *Mercer* negligently collided with a section of pipe and its pontoon support. The pipe and pontoon were part of a series which was attached at one end, some 500 feet distant, to a dredge. The dredge pumped spoil from the channel bed through the pipeline, part of which (1200-1300 feet) was floated on the surface of the water by means of pontoons and part of which lay horizontally on the bed of the channel, to a disposal area on the far side of the channel. The impact damaged the pipeline and pontoons and caused one of the pontoons to collide with and damage a shrimp boat, the *Icie,* moored alongside of the pontoon line.

As in the District Court, the sole issue on appeal is whether the damage for which libelant seeks indemnification is within the coverage of the P & I policy. This turns on whether the pipe and pontoon were a "vessel or craft" within the meaning of clauses four and five of the policy. These, in pertinent part, read as follows:

> (4) Liability for loss of or damage to any other vessel or craft, or to property on board such other vessel or craft, caused otherwise than by collision of the insured vessel with another vessel or craft.
>
> • • • • • •
>
> (5) Liability for damage to • • • any fixed or movable object or property whatsoever, except another vessel or craft • • • unless elsewhere covered herein.
>
> • • • • • •

Accordingly, if the sums paid by libelant to the owners of the pipeline and of the Icie were damages arising out of a collision with a "vessel or craft" as excluded from coverage by these clauses, libelant has no case and the decree should be reversed.

That policies of insurance are to be construed in favor of the insured is too well established to require citation. But even without this venerable canon of construction, our view is that these clauses, reasonably construed, cover the loss here. "Vessel," in the broadest sense, may be defined as including "every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 U. S. C. §3. But respondent concedes that the sections of pipe and pontoons, apart from the dredge, are not by themselves a vessel, or craft, within the meaning of the policy, and we cannot see how they become capable of transporting anything when attached to the dredge in operation and hence immobile. The same conclusion emerges from a consideration of the phrase "property on board" which appears in clause (4). For the use of the broad term "property" leaves no doubt that everything on the vessel, whether or not part of the vessel, is excluded from coverage. Nothing could have been simpler than to broaden the exclusion to apply to property off the vessel, but attached thereto, if that had been desired. On the other hand, there can be no doubt that the pipe and pontoon lines are fairly described as movable objects or property—the language of the insurance coverage.

Moreover, P & I coverage is intended as the complement to collision insurance. This purpose would be frustrated, however, if, as has been suggested, ordinary collision clauses do not protect the shipowner against liability arising from a collision of his ship with a pontoon. 2 Arnould, Marine Insurance §795 (13th ed., Lord Chorley, 1950).

We thus reach the same result as did the lower court by following the reasoning of the English courts in *Bennett S.S. Co., Ltd.* v. *Hull Mutual S.S. Protecting Soc. Ltd.*, (1913) 3 K. B. 372, aff'd, (1914) 3 K. B. 57. And, in so far

as the English court rested its result on the fair import of the language of the clause—which in part is also the language in the clause here being construed—we too approve its reasoning. But the *Bennett* court also reconciled its decision with an earlier one, *In re Margetts* and *The Ocean Accident and Guarantee Corp.*, (1901) 2 K. B. 792, holding a collision with an anchor attached by twenty to thirty fathoms of chain to a schooner was a collision with a vessel. The distinction there drawn was that an anchor is an essential part of a ship, without which she could not prudently put to sea, whereas fishing nets, which were involved in the *Bennett case*, are in no sense conducive to the seaworthiness of a vessel.

In the District Court, respondent appears to have relied almost entirely on the authority of *In re Margetts*. While the court below properly held *In re Margetts* inapplicable here, it did so by distinguishing it from the *Bennett* case in such a way as to perhaps indicate approval of *In re Margetts*. But we find no occasion now to express any opinion with reference to *In re Margetts*. We file this caveat, however, as *In re Margetts* followed and extended the principle of *The Niobe*, [1891] A. C. 401, in which it was held that a ship in tow of a tug must be regarded as one and the same vessel so that the ship was liable for damages to another vessel with which the tow collided. This circuit, however, has voiced a clear preference for the view of Lord Bramwell, who dissented in *Niobe* because he thought that the language of the collision clause, a typical one, was not, but should have been, given its natural and primary meaning. *Western Transit Co.* v. *Brown*, 2 Cir., 161 Fed. 869, cert. denied, 210 U. S. 434; *Coastwise S.S. Co.* v. *Aetna Ins. Co.*, S. D. N. Y., 161 Fed. 871; see also 2 Arnould, Marine Insurance §795 n. 93 (13th ed., Lord Chorley, 1950).

We do not think the conclusion thus arrived at is affected by *Moore* v. *Purse Seine Net*, Cal., 105 P. 2d 919, rev'd on rehearing 118 P. 2d 1 (1940), aff'd sub nom. *C. J. Hendry* v. *Moore*, 318 U. S. 133, or by any of the other cases cited by respondent.

Affirmed.

APPENDIX C.

UNITED STATES COURT OF APPEALS.

FOR THE SECOND CIRCUIT.

TRINIDAD CORPORATION,
Libelant-Appellee,

v.

AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION & INDEMNITY ASSOCIATION, INC.,
Respondent-Appellant.

Before CLARK, Chief Judge, and MEDINA and WATERMAN, Circuit Judges.

On Petition for Rehearing.

KIRLIN, CAMPBELL & KEATING, New York City (IRA A. CAMPBELL and ELMER C. MADDY, of counsel), for respondent-appellant.

PER CURIAM.

Petition for rehearing denied.

C. E. C.
H. R. M.
S. R. W.
C. JJ.

4/31

MAY 10 1956
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 941

AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION, INC.,

Petitioner,

—against—

TRINIDAD CORPORATION,

Respondent.

BRIEF FOR RESPONDENT TRINIDAD CORPORATION IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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APPENDIX C.

UNITED STATES COURT OF APPEALS.

FOR THE SECOND CIRCUIT.

TRINIDAD CORPORATION,
Libelant-Appellee,

v.

AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION & INDEMNITY ASSOCIATION, INC.,
Respondent-Appellant.

Before CLARK, Chief Judge, and MEDINA and WATERMAN, Circuit Judges.

On Petition for Rehearing.

KIRLIN, CAMPBELL & KEATING, New York City (IRA A. CAMPBELL and ELMER C. MADDY, of counsel), for respondent-appellant.

PER CURIAM.

Petition for rehearing denied.

C. E. C.
H. R. M.
S. R. W.
C. JJ.

MAY 1) 195
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

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TRINIDAD CORPORATION,

Respondent.

BRIEF FOR RESPONDENT TRINIDAD CORPORATION IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 941

AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION, INC.,

Petitioner,

—against—

TRINIDAD CORPORATION,

Respondent.

BRIEF FOR RESPONDENT TRINIDAD CORPORATION IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Opinions Below

The opinion of the District Court for the Southern District of New York (R. 32) is reported at 130 F. Supp. 46. The unanimous opinion of the Court of Appeals for the Second Circuit affirming the decision of the District Court (R. 47, Petition, p. 16) is reported at 229 F. (2d) 57.

Jurisdiction

The opinion of the Court of Appeals for the Second Circuit was entered on January 20, 1956 and judgment was entered on February 20, 1956, following denial of petition for rehearing (R. 52, Petition, p. 20). The petition invokes the jurisdiction of the Court under 28 U. S. C. 1254 (1).

Question Presented

The issue in the case is simple. The question presented is,—"Was the pipeline structure with which the 'Fort Mercer' collided a 'vessel or craft' within the meaning of those words as used in provisions of the policy of insurance issued by petitioner to respondent which would exclude coverage for liability for damage caused by collision of the 'Fort Mercer' with another vessel or craft?" Petitioner relies on these exclusions to avoid liability under the policy.

Statutes Invoked

There are no statutory provisions determinative of the question presented. Section 3 of Title 1 U. S. Code, referred to in the Petition, contains the definition of "vessel" applicable to the determination of the meaning of an Act of Congress. Such definition is, of course, not necessarily definitive of that word as used in a private contract of insurance. The court below did not hold that the statute was applicable but merely said that the statute contained the broadest

definition of "vessel" and that even under that definition the pipe line structure was not a "vessel" (R. 49, Petition, p. 18).

Statement

The statement in the Petition should be supplemented by the following which is quoted from Finding of Fact Sixth of the District Court (R. 41):

> "The pontoon and pipeline equipment was not an essential appurtenance of the dredge, *George W. Catt,* as a vessel without which she could not prudently perform her functions as a vessel; nor was it an essential appurtenance of the *George W. Catt* as a dredge as that vessel could have performed its functions as a suction dredge without the use of such a pipeline by discharging the spoil into barges or other vessels for removal from the location of the dredging operation. The pontoon and pipeline equipment had no essential or permanent connection with or relationship to the dredge." (See also Admission, R. 16).

The pipeline structure is described in detail in paragraph 3 of the Stipulation of Facts (R. 23-24) and photographs of it appear in Exhibit B (R. 28).

Reasons for Denying the Writ.

1. Although the policy of protection and indemnity insurance involved in the present case (R. 26, 27) has been in general use in shipping circles in the United

States and England for a great many years, the question of policy coverage involved, however, is so narrow and of such little general importance that, as far as we have been able to ascertain, this is the first time the courts of this country have been asked to consider it. This case itself involves only about $6,000 exclusive of interest (R. 45).

2. The courts below reached the same result as would have been reached in England. *Bennett Steamship Company, Ltd.* v. *Hull Mutual Steamship Protecting Society, Ltd.,* (1913) 3 K. B. 372, affd. (1914) 3 K. B. 57. It has long been recognized by this Court that:

> "There are special reasons for keeping in harmony with the marine insurance laws of England, the great field of this business, * * * We repeat that we are dealing not with general principles but only with the construction of an ancient form of words which always have been taken in a narrow sense, * * *." *Queen Insurance Co.* v. *Globe & Rutgers Fire Ins. Co.,* 263 U. S. 487, 493.

There is no established principle of law in this country which would require a different result than that reached by the courts below giving a reasonable and sensible meaning to the language used in the policy. Indeed the English law being clear, and the law of this country presumably in accord therewith, it may be presumed that when respondent issued its policy to libellant in 1949, the terms "vessel or craft" and "otherwise than by collision * * * with another vessel or craft" were used in the sense of the definite meaning which those terms had acquired in marine

insurance law through the decisions of the English Courts. It is well known that conditions in insurance policies are ordinarily interpreted according to the meaning given them by previous decisions of the courts.

> "Especially in marine insurance policies this is true. Early decisions and customs established the meaning of the forms then in use, and 'Since those decisions, and the recognition of those customs, merchants and underwriters have for many years continued to enter into policies in the same form. According to ordinary principle, then, the later policies must be held to have been entered into upon the basis of those decisions and customs. If so, the rules determined by those decisions and customs are part of the contract.' *Lohre* v. *Aitchison,* 3 Q. B. D. 558, 562. And see *Smith* v. *Automobile Ins. Co.,* 108 Conn. 349, 143 A. 165; *Central Nat. Bk.* v. *Bennett,* 33 Oh. App. 396, 169 N. E. 707; *Lathers* v. *Mut. F. Ins. Co.,* 135 Wis. 431, 116 N. W. 1, 22 L. R. A. (N. S.) 848, 15 Ann. Cas. 659."
>
> (Williston on Contracts, Rev. Ed. §614, Vol. 3, p. 1765.)

3. Petitioner cites in support of its argument no case involving interpretation of the language of an insurance policy. *The Admiral Peoples,* 295 U. S. 649, was a narrow question of admiralty jurisdiction. The case of *Moore* v. *Purse Seine Net,* 105 Pac. (2d) 919, revd. 118 Pac. (2d) 1, which reversal was affirmed by this Court sub nominee, *C. J. Hendry Co.* v. *Moore,* 318 U. S. 133, is hardly relevant and is certainly not contrary to the holdings below of the District Court

and Court of Appeals. The quotation at page 11 of the Petition is from the earlier opinion of the Supreme Court of California which that court reversed on rehearing. (See also Statement, this brief supra, p. 3.) The opinion in *In re Margetts and the Ocean Accident & Guarantee Corporation, Ltd.* (1901) 2 K. B. 792, must, of course, be read in the light of the later *Bennett Steamship Co.* case, *supra*. As the courts below held, *In re Margetts, supra*, is inapplicable to the facts of the present case. The caveat noted by the Court of Appeals with respect to *In re Margetts* is, therefore, not material to the question now before this Court. The same applies to *The Niobe* (1891) A. C. 401. Moreover, that decision had been disapproved long ago in *Western Transit Co.* v. *Brown*, 2 Cir., 10 Fed. 869, cert. denied, 201 U. S. 434.

4. An interpretation by this Court of the provisions of Petitioner's policy is unnecessary to the determination of possible future cases. If petitioner wishes to exclude coverage for liability for damage to pipeline structures, it can do so by amending its policy. The fact that after such amendment it might have difficulty in selling the policy is, we submit, no reason for this Court to be asked to broaden an exclusion by interpretation where the insurance company itself hesitates to do so by appropriate clear language in its policy.

5. The decisions below were clearly correct. To say, as petitioner contends, that collision with the pipeline structure is a collision with the dredge because the pipeline is at the moment of collision attached to the dredge at a considerable distance from

the point of contact would certainly be straining and distorting the language of the insurance policy and going far outside the ordinary English meaning of the words. If the petitioner insurer had really desired, or now desires, to exclude liability for collision with such a structure, the exclusion, we submit, should be in clearer and more specific language.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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